



**BILLING CODE: 4410-09-P**

**UNITED STATES DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION**

**Docket No. 14-24  
NICHOLAS NARDACCI, M.D.  
DECISION AND ORDER**

On July 15, 2014, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nicholas J. Nardacci, M.D. (Respondent), of Albuquerque, New Mexico. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration AN9444592, on the ground that he lacks authority to handle controlled substances in New Mexico, the State in which he is registered with DEA. Show Cause Order, at 1 (citing 21 U.S.C. §§ 823(f) & 824(a) (3)).

The Show Cause Order specifically alleged that on August 20, 2013, the New Mexico Medical Board (the Board) issued a Decision and Order suspending Respondent's medical license, based on its finding that since 2010, Respondent had prescribed medical marijuana for numerous persons by certifying to the New Mexico Department of Health that he was each person's medical provider, without first establishing that he was the primary caregiver for any of those persons or otherwise first establishing a physician-patient relationship as required under NMSA §§ 26-2B-1 *et seq.* *Id.* at 1. Based on the State's suspension of his medical license, the Order alleged that Respondent was without authority to handle controlled substances in New Mexico, the State in which he is registered with DEA, and thus, he is not entitled to maintain his registration. *Id.* (citing 21 U.S.C. §§ 801(21), 823(f) and 824(a)(3)).<sup>1</sup>

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<sup>1</sup> The Show Cause Order also notified Respondent of his right to request a hearing on the allegations, or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. Show Cause Order, at 2 (citing 21 CFR 1301.43).

On or about August 4, 2014, the Show Cause Order was served on Respondent, and on September 2, 2014, Respondent filed a letter with the Office of Administrative Law Judges. GX 4. Therein, Respondent acknowledged that he had been served with the Show Cause Order and requested additional time in which to respond to the Order so that he could retain a lawyer; however, he did not request a hearing. *Id.* Respondent also asserted that on August 12, 2014, the Board had issued a Return to Work Order and therefore, his state medical license was now active. *Id.* The matter was then assigned to an Administrative Law Judge, who ordered the Government to respond to Respondent's statement that "he currently has an active license." GX 5, at 1.

In the meantime, on September 3, 2014, the New Mexico Medical Board notified a DEA Diversion Investigator in the Albuquerque District Office that the Board's August 12, 2014 Order did not place any formal restrictions on Respondent's authority to prescribe controlled substances, explaining that his prescribing was not at issue in the Board's case. GX 3. Thereafter, on September 9, 2014, the Government filed a motion for Termination of Proceedings, stating that the allegations of the Show Cause Order were now moot and that "these developments apparently obviate the need for any further proceedings." GX 5, at 2.

Noting that Respondent had not requested a hearing, the ALJ concluded that "the only jurisdictional authority" she possessed was to determine whether to grant Respondent's request for "a reasonable extension of the time allowed for response to an Order to Show Cause." Order Denying Respondent's Motion For Extension of Time, at 2 (quoting 21 CFR 1316.47). The ALJ thus concluded that she did not have jurisdiction to rule on the Government's motion. *Id.* The ALJ then denied Respondent's motion, "with the understanding that the Government will take the necessary steps to properly dismiss the" Show Cause Order. *Id.*

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On February 3, 2015, the Government submitted a “Request [f]or Dismissal [o]f Order [t]o Show Cause.” Therein, the Government states that although Respondent was without state authority to handle controlled substances on July 15, 2014, when the Show Cause Order was issued, the New Mexico Medical Board has since lifted the suspension of his medical license and Respondent currently has no restrictions on his state authority to handle controlled substances.<sup>2</sup> *Id.* at 2. Because the Show Cause Order sought revocation of Respondent’s registration solely on the basis of his lack of state authority to handle controlled substances, and that ground for revocation no longer exists, the Government requests that I dismiss the Order. *Id.* at 2.

Based on my review of the Board’s Order, as well as the Board’s September 3, 2014 letter to the Diversion Investigator, I find that Respondent is currently authorized to dispense controlled substances in New Mexico, the State in which he is registered with this Agency. Because Respondent’s loss of state authority was the sole basis for the Show Cause Order and this ground no longer exists, I conclude that this case is now moot and will order that the Show Cause Order be dismissed.

### **ORDER**

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Nicholas J. Nardacci, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Date: August 10, 2015

Chuck Rosenberg  
Acting Administrator

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<sup>2</sup> The Government submitted a copy of the Board’s Order with its Request for Dismissal. *See* GX 2.

